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Canada

February 12, 2021

**VIA EMAIL and RESS**

Ms. Christine Long  
Registrar  
Ontario Energy Board  
2300 Yonge Street, 27th Floor  
Toronto, ON M4P 1E4

Dear Ms. Long:

**Re: Enbridge Gas Inc. (Enbridge Gas)  
Ontario Energy Board (OEB) File: EB-2020-0198  
NPS 20 Waterfront Relocation Project (Project) – Reply Submission**

In accordance with Procedural Order No. 5 dated January 29, 2021, enclosed please find Enbridge Gas' Reply submission in the above noted proceeding.

Please contact the undersigned if you have any questions.

Yours truly,

Joel Denomy  
Technical Manager, Regulatory Applications

cc: G. Pannu – Counsel - Enbridge Gas Inc.  
S. Stoll – Counsel - Aird & Berlis LLP  
Intervenors (EB-2020-0198)

**ONTARIO ENERGY BOARD**

**IN THE MATTER OF** The *Ontario Energy Board Act*,  
1998, S.O. 1998, c.15, Schedule B, and in particular,  
S.90.(1) and S.97 thereof;

**AND IN THE MATTER OF** an Application by Enbridge  
Gas Inc. for an Order granting leave to construct natural  
gas pipelines in the City of Toronto.

**ENBRIDGE GAS INC.**

**RESPONDING SUBMISSIONS TO PROCEDURAL ORDER NO. 5**

**Introduction**

1. Enbridge Gas Inc. (“Enbridge Gas”) is responding to the Ontario Energy Board’s (“OEB” or the “Board”) questions provided in Procedural Order No. 5 and the submissions of the various parties responding to such questions. In considering the questions posed by the Board, Enbridge Gas submits the responses to the questions must be considered in light of the Board’s statutory objectives and the public interest considerations that it is legally obliged to consider in a leave to construct application. This Application has raised issues of competing public interests and how such interests should be weighed against each other.
2. The Board’s decisions in leave to construct proceedings must consider whether the Application (emphasis on the Application) is in the public interest<sup>1</sup> which generally involves consideration of the following issues: (i) project need; (ii) project cost; (iii) alternatives considered; (iv) environmental impacts; (v) Indigenous consultation; and (vi) land impacts. These issues are not intended to be comprehensive but rather typical of leave to construct applications. The Board, in carrying out its responsibilities, must also consider its statutory objectives set out in Section 2 of the *Ontario Energy Board Act*, 1998 (the “OEB Act”)<sup>2</sup> which provide a number of objectives relevant to the natural gas industry in Ontario. These considerations should also inform the Board’s consideration of the questions raised in Procedural Order No. 5.

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<sup>1</sup> *Ontario Energy Board Act*, 1998, S.O. 1998, Schedule B, c. 15, s.96.

<sup>2</sup> S.O. 1998, Schedule B, c. 15.

3. Prior to directly responding to the issues raised by the Board, Enbridge Gas will provide a short commentary to provide context to the consideration in front of the Board.

### **City of Toronto Court Application**

4. The City of Toronto ("City") filed a notice of application with court (the "Court Application") seeking certain declaratory relief in respect of the pipeline being located on the Keating Railway Bridge. A copy of the Notice of Application is attached to these submissions as Attachment A. In the Court Application, the City raises issues that will also inform the evidence in this, or any subsequent, leave to construct application and the Board's consideration of the public interest. But for Waterfront Toronto's lack of willingness to pay for the relocation being caused by its project, such evidence would not be relevant to the Board's consideration.
5. The City's position in the Court Application, which has also been advanced in this proceeding, is the City has no financial responsibility for Enbridge Gas' pipeline. It has also supported Waterfront Toronto in trying to evade cost responsibility by issuing a letter for Enbridge Gas to remove its pipeline from the Keating Railway Bridge arguing how can Waterfront Toronto have cost responsibility where Enbridge Gas has no right to be located on the Keating Railway Bridge. The City's current position is at odds with its prior position that the Enbridge Gas project is subject to cost sharing under the *Public Service Works on Highways Act*, R.S.O. 1990, c. P.49 ("PSWHA").
6. On February 10, 2021, the Enbridge Gas, along with the City, attended at court where the following schedule for the Court Application was established. The Application will be heard by the Court on May 17, 2021. Enbridge Gas does not know when a decision will be issued by the Court.
7. Enbridge Gas does not dispute the fact the City, as the current owner of the Keating Railway Bridge, has the ability to request Enbridge Gas to relocate its pipeline. Enbridge Gas does, however, dispute the cost consequences advanced by the City and the reasonableness of the City's request. Further, Enbridge Gas submits the City's position in the Court Application fails to acknowledge the interconnectedness of the reasonableness of any demand for relocation and the Board's exclusive jurisdiction in the leave to construct process. Enbridge Gas cannot relocate the NPS 20 pipeline without approval of the Board. The Court Application also does not consider the conflict between the pipeline and the widening of the mouth of the Don River west of the Keating Railway Bridge.

8. Enbridge Gas submits that the resolution of the Court Application is relevant to the Board's consideration of the public interest given the changed circumstances surrounding the present Application. A decision from the Court will have a direct bearing on the costs that ratepayers may be asked to bear as part of the relocation process.

#### **No Temporary Crossing Should be Pursued**

9. Waterfront Toronto's continued insistence on the viability of a temporary option is an unnecessary and harmful distraction to the issues at hand as it diverts resources from viable alternatives. Neither the City nor Waterfront Toronto are gas utilities nor do they have any application in front of the Board seeking leave to construct which would be required for any such proposal. There is only one application, the Enbridge Gas Application for the Station A Project before this Board. Enbridge Gas has noted on multiple occasions the safety concerns regarding any option, temporary or otherwise, that would have construction activity occurring over, under and all around an exposed NPS 20 vital main. Waterfront Toronto is seeking to have this Board circumvent its statutory obligations in considering a leave to construct to preserve its budget and schedule which failed to properly account for the need to replace, then abandon, the NPS 20 pipeline. Public and worker safety cannot be compromised in the name of expediency.
10. Figure 1 below shows the existing conditions. Note the narrowness of the Don River just before it enters in the Keating Channel; the position of the ramps connecting the Gardiner Expressway to the Don Valley Parkway; and the existence of the pedestrian bridge north of Lakeshore Road East.

Figure 1 – Aerial View of Existing Conditions<sup>3</sup>



Figure 4 Aerial View of Existing Conditions

11. The conflict between the NPS 20 pipeline and the Waterfront Toronto river widening is not just the approximate 40 metres of pipeline across the Keating Railway Bridge, but an additional nearly 50 metres west of the bridge to accommodate the river widening.<sup>4</sup> It is this additional width and large water storage area that dramatically reduces the space available. Figures 2, 3 and 4 below, show the wider mouth of the Don River, the marsh, the lack of the pedestrian bridge and some of the additional and relocated infrastructure (e.g. ramps) that will be constructed and provide constraints on any project in the area.

<sup>3</sup> [https://portlandsto.ca/wp-content/uploads/due\\_diligence\\_report\\_october\\_20\\_2016\\_1.pdf](https://portlandsto.ca/wp-content/uploads/due_diligence_report_october_20_2016_1.pdf)  
at page 30.

<sup>4</sup> A link showing a general overview of the activity in the area is provided: <https://portlandsto.ca/project-map/>

Figure 2 – Keating Precinct Port Lands Flood Protection Enabling Infrastructure <sup>5</sup>



<sup>5</sup> A link showing a general overview of the activity in the area is provided: <https://portlandsto.ca/project-map/>



Figure 3 – Aerial View of the Full Vision of the Port Lands<sup>6</sup>



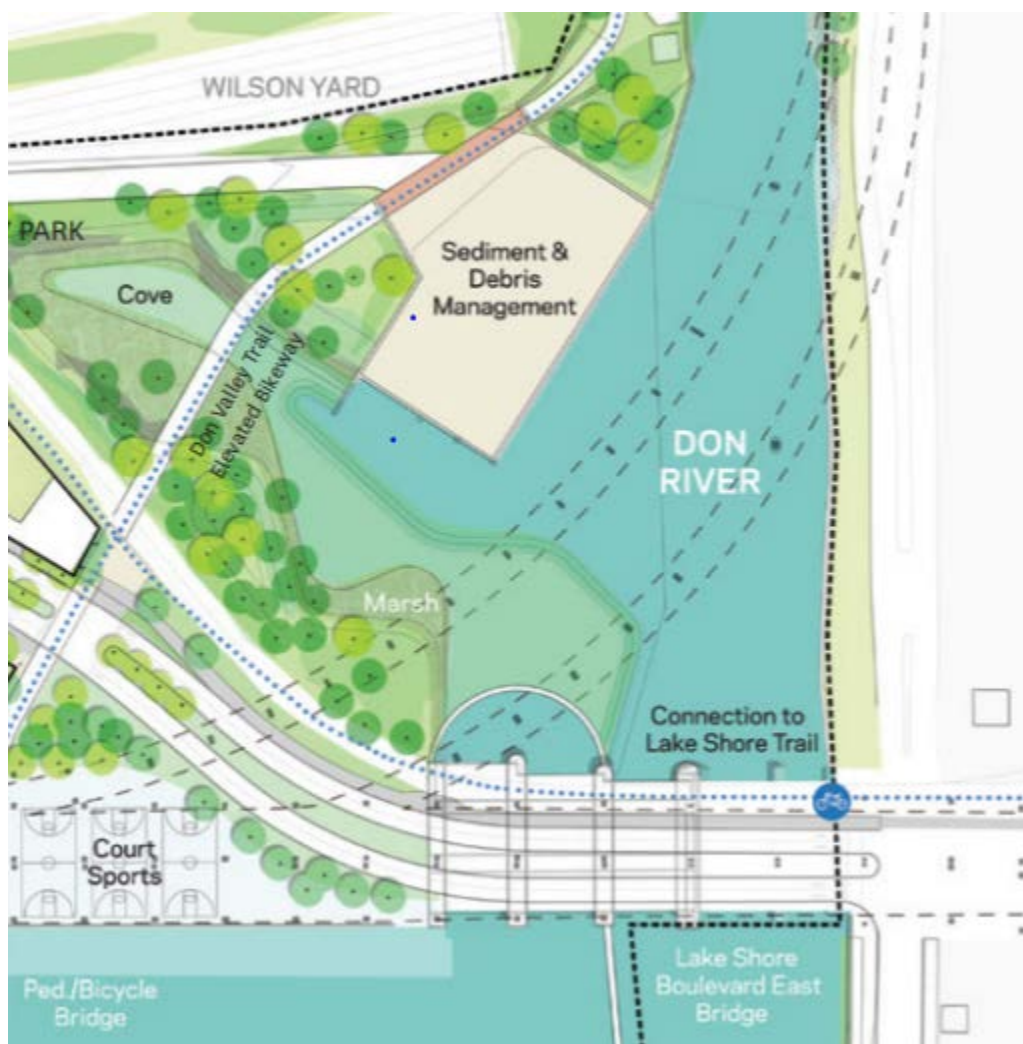
12. Any temporary option would need to be constructed:

- a) at such a distance from the Waterfront Toronto work that it would be safe from any danger posed by the 2 years of construction that is to occur within the area of the widening of the channel and all of the other activities that will take place in the vicinity such as the Keating Bridge removal and construction of the additional piers;
- b) would require the full NPS 20 temporary solution to address the conflict with the existing pipeline bridge crossing on the Keating Railway Bridge and the pipeline within the road allowance immediately west of the railway bridge which is in direct conflict with the proposed new bridge extensions and widening of the mouth of the river;
- c) the NPS 20 temporary solution would be required to provide a secure feed into the downtown core through two winter construction seasons;

<sup>6</sup> [https://portlandsto.ca/wp-content/uploads/due\\_diligence\\_report\\_october\\_20\\_2016\\_1.pdf](https://portlandsto.ca/wp-content/uploads/due_diligence_report_october_20_2016_1.pdf)  
 at page .pdf 31.

- d) would require land easements on both sides of the river to and from the location of the temporary support structure; and
- e) require a new temporary support structure spanning the Don River that would be both technically safe, as well as able to be permitted and constructed safely and avoid other conflicts such as any relocated ramps between the Gardiner Expressway and the Don Valley Parkway.

Figure 4 – Detailed View of the Don River North of Lakeshore Road East.<sup>7</sup>



<sup>7</sup> [https://www.waterfrontoronto.ca/nbe/wcm/connect/waterfront/048f2525-b645-473b-a5f3-74d9b2bb1ebe/keating\\_channel\\_precinct\\_plan\\_may\\_2010\\_40\\_mb\\_1.pdf?MOD=AJPERES&CACHEID=048f2525-b645-473b-a5f3-74d9b2bb1ebe](https://www.waterfrontoronto.ca/nbe/wcm/connect/waterfront/048f2525-b645-473b-a5f3-74d9b2bb1ebe/keating_channel_precinct_plan_may_2010_40_mb_1.pdf?MOD=AJPERES&CACHEID=048f2525-b645-473b-a5f3-74d9b2bb1ebe) at page pdf 13.



13. Enbridge Gas notes that the standards imposed by the CSA-Z662 and through the Technical Standards and Safety Authority do not change because a project is “temporary”. Further the TRCA has indicated that the risks related to flooding are higher until the entire Port Land Flood Protection Enabling Infrastructure is complete. Enbridge Gas is in the best position to assess the safety related to its infrastructure and a temporary relocation in the same area as the existing pipeline is not supportable.
14. Further, the cost of the temporary solution would have to be considered in light of the permanent solution and any consultation obligations with Indigenous communities would have to be discharged. These are not issues that can be swept aside to deal with Waterfront Toronto’s purported urgency.
15. To illustrate the timing issues with permitting – even permitting for a temporary solution, Enbridge Gas notes that TRCA has indicated that approval can take a couple of months after resolution of all of the issues and the receipt of a complete acceptable application. However, the TRCA submission downplays the many months it can take to have an acceptable application. Enbridge Gas has provided a brief summary of the relevant key dates for the property and permit acquisitions for the NPS 30 project:
  - September 2017, Serious in person conversations began with TRCA.
  - March 2018, TRCA advised they would support our micro tunnel route.
  - March 2018, Receive TRCA permit to complete geotechnical investigation.
  - July 2018, Leave to Construct Application is filed with the OEB.
  - August 2018, Submit our first permit application for pipe installation.
  - February 2019, TRCA Board approves permit and easement request.
  - July 2019, Receive TRCA permit.
  - July 2019, Tri Party Agreement signed (Enbridge, TRCA and the City). Enbridge Gas would note that the permitting process with the TRCA in respect of the micro-tunnel.
16. To be clear, Enbridge Gas is not impugning the professionalism or process of the TRCA. This process and timeline is not atypical of large permitting organizations considering technically complex submissions. A permitting agency may request additional information which requires field work or additional studies to be

completed. As illustrated above, it took several months to get the concept of the project approved in order to complete the necessary applications to perform the geotechnical investigation. In all, it took approximately 22 months to receive a permit.

17. Finally, a temporary solution would require leave to construct from the Board – a temporary solution cannot be part of the current application. In addition to many other issues, notice of such a project would be inadequate, as would Indigenous consultation. In addition to being unsafe, the temporary option is not practical for so many other reasons as indicated above.

### **Question 1**

**Adverse Impacts on Waterfront Toronto: What impact could the withdrawal of the application have on the Flood Protection Project schedule, if any? Can Waterfront Toronto adjust its schedule such that Enbridge Gas has more time to assess alternatives to the Project proposed in this Application?**

18. Energy Probe made submissions that the Board should not consider the impact on Waterfront Toronto given the fact Waterfront Toronto is not a consumer of gas and not subject to the Board's jurisdiction. Enbridge Gas submits this is a valid perspective. This question posed by the Board presumes that the Board has the jurisdiction and obligation to consider the potential adverse impact on Waterfront Toronto of either delay or increased cost. To what extent does the Board's consideration of this Application include the impact on a party that is not a natural gas customer nor has contractual or other legal connection to the proposed project? Where do such considerations, if available, rank for the Board in its consideration of the public interest and the Board's statutory objectives provided in Section 2 of the OEB Act?
19. Waterfront Toronto has requested that Enbridge Gas relocate off the Keating Railway Bridge by May 2022. The relocation is also driven by the widening of the river by Waterfront Toronto that is in conflict with the buried NPS 20 pipeline located within the municipal road allowance west of the Keating Railway Bridge. However, it is the City that issued a letter purporting to terminate Enbridge Gas' right to be located on the Keating Railway Bridge; coincidentally for the date sought by Waterfront Toronto. While the City has yet to determine what it will do with the Keating Railway Bridge; it requires the removal to facilitate Waterfront Toronto's work.

20. Waterfront Toronto has no contractual relationship with Enbridge Gas in respect of the NPS 20 pipeline and it has no ownership interest in the Keating Railway Bridge. This Application was prepared and contribution sought from Waterfront Toronto for 100% of the costs similar to if the request had been made by Metrolinx or the Toronto Transit Commission. Waterfront Toronto states it has no money for any relocation of the pipeline and the Board has no jurisdiction to order it to pay Enbridge Gas. The City has resiled from an earlier position and refused to contribute to the cost of relocation. As such, the expectation is ratepayers will be obligated to pay for the relocation even though a target date of May 2022 precludes lower cost options. If, however, the Court Application does not confirm the City 's request, would the calculation about Waterfront Toronto's schedule change?.

a) Target Date – May 2022

21. If the City's termination letter is effective and May 2022 is the date whereby Enbridge Gas has to be off the Keating Railway Bridge and have relocated the pipeline immediately west of the Keating Railway Bridge that is within the road allowance, there are no alternative options other than the current Application that can meet that time frame. However, the evidence in support of the Project needs to be updated in order to permit the Board to be able to properly consider the public interest given the positions taken by Waterfront Toronto and the City and the Board's decision regarding the jurisdictional motion issue January 22, 2021. Considerations would include:
- i. What would be the least cost alternative replacement project to which ratepayers would be expected to bear for a true like for like replacement? The alternatives referenced in the Application were only subject to a Class 5 estimate (+/- %) because such options did not meet the timetable of Waterfront Toronto and Enbridge Gas' expectation that Waterfront Toronto should pay 100% of the relocation.
  - ii. To what extent would ratepayers benefit from additional or newly available capacity in the downtown core?
  - iii. Can the relocation reduce or potentially avoid future relocation costs that might otherwise be associated with future reconstruction of Lakeshore Road East?
  - iv. To what extent should the City be expected to contribute for pipeline relocation that is not on the bridge? Does the PSWHA apply in respect of such pipeline or does the City bear 100% of the responsibility for such costs?

22. In this scenario, withdrawal of the current Application, coupled with the resubmission of a new application with updated evidence and the benefit of the resolution of the Court Application would assist the Board in discharging its statutory duties in considering the public interest.

*b) Target Completion Date – Post 2022*

23. If however, there is additional time which Enbridge Gas had understood may be available from its discussions with Waterfront Toronto, then the availability of other options must be considered more closely. It is only in considering such alternatives that the Board can discharge its statutory duty to consider the public interest.
24. To be clear, Enbridge Gas is not talking about a few weeks of additional time, but rather several months of additional time. It will take 10 to 12 months to be able to assemble the necessary evidence to support a leave to construct application for either the micro-tunneling or Villiers Island options. While Enbridge Gas can pursue various tasks in parallel rather than sequentially to shorten the timeframe, there is a limit to how quickly such a project can be completed.
25. A new application will benefit and assist the Board in discharging its statutory obligation to determine whether an application is in the public interest regardless of the deadline for the proposed relocation.

## Question 2

**Public Interest and Reliability of Natural Gas Supply: If the Application is withdrawn, how can Enbridge Gas ensure the security of gas supply to its customers in the City of Toronto while addressing the removal of the Existing Pipeline from the Bridge?**

26. The OEB Act provides statutory objectives for the discharging of the Board's duties under the OEB Act. Enbridge Gas would submit that the obligation to ensure the continuity of gas delivery, especially in winter months, is a paramount objective of the Board.

2 The Board, in carrying out its responsibilities under this or any other Act in relation to gas, shall be guided by the following objectives: .....

2. To inform consumers and protect their interests with respect to prices and the reliability and quality of gas service.

27. In Enbridge Gas' submission, the NPS 20 Vital main cannot be removed from service without replacement capacity being made available – any such replacement is solely within the Board's jurisdiction to approve under the section 90 of the OEB Act. Enbridge Gas' system modelling indicates that loss of the existing NPS 20 Vital main in winter conditions could leave more than 1200 meters and tens of thousands of residences and businesses without natural gas, including EnWave who provides energy to approximately 180 downtown buildings.<sup>8</sup> Enbridge Gas does not foresee an order from a court jeopardizing such service.
28. The existing option, with a new application could be completed such that the existing bridge crossing is removed by the required deadline. The difficulty, is the evidentiary record prior to the issuance of the letter from the City - and lack of legal certainty over the effect of such letter – and other factors which are now necessary considerations of the public interest. If there is more time, other lower cost options become available and the Board must consider those in light of a new deadline.

### Question 3

***Withdrawal with Conditions: If the OEB allows the Application to be withdrawn what, if any, conditions should it include in its decision? For example, should Enbridge Gas be required to provide a schedule for filing a new Leave to Construct application?***

29. For the reasons explained below, Enbridge Gas opposes the imposition of any date certain condition that would require it to submit a leave to construct application and opposes any ongoing reporting obligation. Enbridge Gas will commit to filing with the Board any resolution of the court application within 10 days of such resolution. Enbridge Gas will also commit to working diligently towards an acceptable resolution and the filing of a new leave to construct application.

### No Date Certain LTC Application

30. Enbridge Gas would oppose any requirement to file a leave to construct application within a specified time period. The development and evolution of a pipeline application is not a straight line where events will happen at predetermined dates but rather is a process of refinement of the options under consideration which is developed with input from various stakeholders (the City, TRCA, Waterfront Toronto, other landowners and impacted parties, technical experts, other permitting agencies

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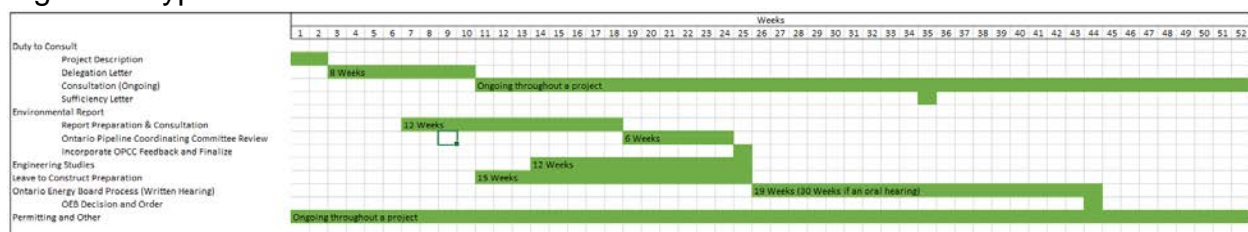
<sup>8</sup> <https://www.enwave.com/locations/toronto.htm>



and Indigenous communities). The process evolves as information becomes available from such sources to Enbridge Gas.

31. The preparation of the evidence in support of a leave to construct application takes several months and depends upon the nature of the project and third parties upon whom Enbridge Gas is reliant for information. Enbridge Gas will either file an application for the current option or an application regarding a different option. In figure 5 , below Enbridge Gas has shown a typical straightforward leave to construct application. The current situation will require additional time as it is anything but typical given the potential for multiple water crossings, micro-tunneling with future piling activity in close proximity, coordination with multiple other entities and subject to significant physical constraints (current and future).

Figure 5: Typical Leave to Construct Timeline



32. A new leave to construct application for the Station A option incorporating different cost responsibility, the resolution of the City 's court application and other evidence pertaining ratepayer benefits can be assembled in a few months.
33. However, it is wholly unreasonable to expect Enbridge Gas to complete a leave to construct application on either the micro-tunneling option or the Villiers Island option in 6 months in normal times, let alone during a pandemic.
34. With respect to a leave to construct application involving a different option, either (a) micro-tunneling; or (b) Villiers Island, Enbridge Gas would need to complete a new environmental report and undertake consultation with affected stakeholders and Indigenous communities. Consultation in respect of the chosen option is a legal requirement to proceed.
  - Which landowners will be impacted? Will the landowners agree to grant rights to Enbridge Gas in respect of the proposed pipeline or will expropriation be required. Enbridge Gas noted the potential landowners that would be impacted by various alternatives and the risks posed.<sup>9</sup>

<sup>9</sup> Exhibit B, Tab 1, Schedule 1, Table 3 and Table 6.

- Enbridge Gas would note that discussions have to occur with various permitting agencies<sup>10</sup> and that while a permit need not be issued prior to the granting of leave to construct, Enbridge Gas must be confident it can obtain the necessary permits in order to file a leave to construct application. Above, Enbridge Gas included its prior experience with the TRCA and other permitting agencies can take years to secure a permit. These are not straightforward river crossings but rather difficult crossings in very confined areas where existing and future infrastructure must be avoided.
  - Enbridge Gas would also be seeking technical assistance regarding micro-tunneling in both options. In the situation involving micro-tunneling in proximity to the current location, input would likely be required in respect of all pile driving and other activities that may directly impact the integrity of the pipeline. This would require specialized knowledge to assist in ensuring there is a technically feasible alternative. Neither the availability of information from third parties nor the availability of third party resources is known nor can it be forecasted with certainty.
  - Scheduling - There is significant construction planned in and around both Keating Railway Bridge and Villiers Island. The availability of the necessary space would have to be determined along with other entities that are expecting to complete work in the area. Without these discussions, a schedule cannot be completed. In addition, Enbridge Gas would be working with the availability of specialized resources.
  - Costing & Procurement – Enbridge Gas would need to ensure the resources, equipment and materials will be available for each option. Further, Enbridge Gas would be dependent upon third parties to provide cost information in order that an estimate of the cost of a project can be put together. How much would micro-tunneling under the Don River or the Keating Channel cost?
35. Enbridge Gas would note that any new application would benefit from the court's determination of the City's court application. One element of relief sought by the City is a declaration that the City is not responsible for the costs of relocating off the Keating Railway Bridge. As Enbridge Gas has noted, the relocation is not just about removing the pipeline from the bridge but removing the pipeline west of the bridge within the existing road allowance where Waterfront Toronto will be widening the

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<sup>10</sup> Exhibit B, Tab 1, Schedule 1, Table 3 and Table 6 list permitting agencies for the Micro-Tunnel Option and the Villiers Island Option respectively.

mouth of the Don River. Does the allocation of costs rest only on the bridge or with broader consideration of the total conflict with Waterfront Toronto's project? Further, Enbridge Gas may be correct that the City's termination letter does not have the same legal effect as that claimed by the City.

### **No Interim Reporting**

36. These projects require a significant amount of coordination with various bodies. As noted above, the project evolution process is not linear and having to explain every change will create an unnecessary burden and be counterproductive to producing a new leave to construct. Enbridge Gas already faces the increased burden of responding to the Court Application.
37. Other than as previously stipulated, Enbridge Gas would oppose any condition requiring ongoing regular reporting. The primary concern for Enbridge Gas in any such condition is the purpose of the reporting. The Board's role is one of regulatory oversight, not micromanaging the company's activities in preparing an application for leave to construct a project. Regular reporting will take additional resources and creates the very real potential for micromanaging the company's activities.

**All of which is respectfully submitted.**

**ENBRIDGE GAS INC.**

By its Counsel



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Scott A. Stoll  
Aird and Berlis LLP

Court File No.:

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

**CITY OF TORONTO**

Applicant

-and-

**ENBRIDGE GAS INC.**

Respondent

APPLICATION UNDER Rule 14.05(3)(d) of the *Rules of Civil Procedure*,  
RRO 1990, Reg 194

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a Judge on a date and time to be set during an attendance at Civil Practice Court, at 330 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date:

Issued by:

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Local Registrar  
330 University Avenue  
Toronto, Ontario  
M5G 1R7

TO:

**Enbridge Gas Inc.**  
500 Consumers Road  
Toronto, ON M2J 1P8



## APPLICATION

### 1. THE APPLICANT MAKES APPLICATION FOR:

- a) An Order declaring that Enbridge Gas Inc. ("Enbridge") has no legal right to maintain its 20-inch natural gas pipeline (the "Pipeline") on the Keating Rail Bridge (the "Bridge").
- b) An Order declaring that removal of the Pipeline shall be carried out at Enbridge's own expense.
- c) An Order requiring that Enbridge take all reasonable measures to ensure removal of the Pipeline from the Bridge by May 2, 2022, in accordance with the Notice of Termination delivered by the City of Toronto (the "City") to Enbridge on October 30, 2020 (the "Termination Notice").
- d) Such further or other relief as counsel may advise and this Honourable Court deems just.

### 2. THE GROUNDS FOR THIS APPLICATION ARE:

#### *The Parties*

- a) The City is a municipality incorporated pursuant to section 2(2) of the *City of Toronto Act, 1997*, and continued pursuant to section 125(1) of the *City of Toronto Act, 2006*.
- b) Enbridge Gas Inc. is a corporation incorporated pursuant to the laws of Province of Ontario and responsible for the supply and distribution of natural gas in Toronto. Enbridge Gas Inc. is a successor to Consumers' Gas Company of Toronto ("Consumers' Gas").

#### *Keating Rail Bridge*

- c) The Bridge is a 20 metre bridge over the Don River immediately to the north of Lake Shore Blvd East. South of the Bridge and Lake Shore Blvd E., the Don River turns west and becomes the Keating Channel.
- d) The City is the current owner of the Bridge.

- e) Historically, a railway spur travelling over the Bridge and to the east served various industrial or manufacturing operations. At present, however, the Bridge is not in use.
- f) Accordingly, the City is currently evaluating whether it is necessary or appropriate to maintain the Bridge in place.

*License to use the Bridge granted to Consumers' Gas in 1955*

- g) Consumers' Gas was established by the *Act to Incorporate the Consumers' Gas Company of Toronto* in 1848 for the purpose of supplying and distributing natural gas in Toronto.
- h) In January, 1955, Consumers' Gas wrote to the Toronto Harbour Commissioners (the "THC"), then owner of the Bridge, requesting permission to use the Bridge to support a 20 inch steel natural gas pipeline that would cross the Don River.
- i) On February 22, 1955, the Commissioners wrote to Consumers' Gas and advised that it approved Consumer Gas' request to use the Bridge to support its pipeline (the "1955 Permission").
- j) The 1955 Permission was subject to the following conditions:
  - (1) All costs would be borne by Consumers' Gas;
  - (2) Consumers' Gas would abide by all local or other by-laws and regulations with respect to the installation of the pipeline; and
  - (3) Consumers' Gas would agree to indemnify and hold harmless the Commissioners for any loss, injury or damage arising out of the construction, operation, maintenance or the existence of the pipeline in its location on the Bridge. Consumers' Gas would also agree that all works related to the pipeline would be to the satisfaction of the Commissioners' Chief Engineer and would be at the sole expense and responsibility of Consumers' Gas.
- k) Subsequently, Consumers' Gas constructed the Pipeline on the Bridge.
- l) Enbridge is the current owner of the Pipeline.

- m) To this day, the Pipeline remains in place.
- n) The February 22, 1995 letter and the preceding correspondence between THC and Consumers' Gas represented the entire agreement between the parties in 1955 and thereafter.
- o) The terms of the license did not and has not at any time require Consumers' Gas, or subsequently Enbridge, to pay any fees for its use of the Bridge.

*City terminates the License*

- p) On October 30, 2020, the City delivered Enbridge the Notice of Termination, requiring Enbridge to remove the Pipeline from the Bridge no later than May 2, 2022 at its cost.
- q) Enbridge does not deny that it must move the Pipeline, but it does deny that it is required to pay for the removal of the Pipeline from the Bridge and its proposed rerouting.
- r) Enbridge has filed a Leave to Construct application with the Ontario Energy Board for approval of its proposed new pipeline route, in accordance with section 90(1) of the *Ontario Energy Board Act, 1998*.
- s) While the Ontario Energy Board has jurisdiction to approve the route of a pipeline and set the rates to be paid by energy consumers, it has no jurisdiction to determine the legal effect of the City's termination of Enbridge's permission to use the Bridge to support its Pipeline.
- t) The legal questions to be determined in this application are, however, important to inform the Ontario Energy Board's consideration of Enbridge's application.

**General**

- u) Rules 1.04, 1.05, 2, 14.05, 14.05(3)(d), (h), 38, and 39 of the *Rules of Civil Procedure*.
- v) The *City of Toronto Act, 2006*, SO 2006, C 11, Sched A.

- w) The *Act to Incorporate the Consumers' Gas Company of Toronto, 1848*, 11 Victoria Cap IIV (Canada).
- x) The *Ontario Energy Board Act, 1998*, SO 1998, c 15, Sched B.
- y) Such further and other legislation and grounds as this Honourable Court may deem just.

**3. THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:**

- a) The Affidavit of David Stonehouse, with attached exhibits
- b) Such further and other material as counsel may advise and this Honourable Court permit.

The Applicant proposes that this Application be heard in Toronto, Ontario.

Dated: \_\_\_\_\_

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***Lawyers for the Applicant,  
 City of Toronto***

**Court File No.**

B E T W E E N :

CITY OF TORONTO  
(Applicant)

and

ENBRIDGE GAS INC.  
(Respondent)

ONTARIO  
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

APPLICATION UNDER Rule 14.05(3)(d)  
of the *Rules of Civil Procedure*,  
RRO 1990, Reg 194

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